

OPINION
53-17

April 7, 1953 (OPINION)

CORPORATIONS

RE: Duration of Cooperatives

This office is in receipt of your request of March 30, 1953, dealing with the corporate duration of the Farmers Cooperative Corporations organized under chapter 10-15 of the N.D.R.C. of 1943. The inquiry is prompted because of the request from the Farmers Union Central Exchange, Incorporated, of St. Paul, in which they set forth that they are contemplating amending the corporate charter of all their farmers cooperative oil companies affiliated with the Farmers Union Central Exchange and in which they set forth that these cooperatives have been organized under chapter 10-15 as noted above. They prefer to have you issue a perpetual charter as provided for in section 10-0106 of the N.D.R.C. of 1943, wherein it is state that a nonprofit corporation may have perpetual existence, whereas profit corporations have only a twenty year charter.

It is also noted that the proposed articles of incorporation will contain the following statement: "All of the business and activities of the association shall be conducted on a cooperative basis, without profit or financial gain to the association."

In passing upon this question, we find that in section 10-1501 of the N.D.R.C. of 1943, it provides:

"For the purposes of this chapter, the words 'company', 'corporation', or 'association' shall mean a company, corporation, or association which has authorized the distribution of its earnings either wholly or partially on the basis of or in proportion to the amount of property bought from or sold to members, or from or to members and other customers, or on the basis of labor performed or services rendered to the association."

It will be noted that this section deals with the distribution of its earnings. It is the opinion of this office that "earnings" referred to is that amount of income which exceeds the operating outlay. This naturally would be a profit. In this particular chapter there is no indication as to the duration of the charter, so we have to consider the general corporation law and there we find in section 10-0106 that where a corporation is organized for profit, the corporate existence shall not exceed twenty years.

It is interesting to note, as you set forth in your communication, that chapter 43 of the 1921 Session Laws, which is now chapter 10-15 of the N.D.R.C. of 1943, was approved on March 9, 1921 and chapter 44 was approved on March 10, 1921. Both of these acts deal with cooperative corporations. Chapter 44 of the 1921 Session Laws, which is now chapter 4-07 of the N.D.R.C. of 1943, deals with Cooperative Marketing Law. Both deal with farmers' cooperatives and the

distribution of earnings. The real significance in the difference between the two lies in section 4-0701 wherein it is stated in subsection 1, 'association' shall mean any corporation organized under this chapter. Such an organization shall be deemed a nonprofit association."

This reference to "nonprofit" is not found in section 10-1501. It is, therefore, reasonable to assume the legislative intent to be, that cooperative associations or corporations organized under chapter 10-15 should be considered profit corporations, while those organized under chapter 4-07 should be considered nonprofit corporations. In the corporations organized under chapter 4j07 the existence may be fifty years.

From the wording of the communication which you have from the Farmers Union Central Exchange, Incorporated, of St. Paul, wherein they set forth the provision dealing with the business and activities of the association, it occurs to the writer that the kind of corporations which this exchange desires conforms more to chapter 4-07 than to chapter 10-15 of the N.D.R.C. of 1943.

It is, therefore, the opinion of this office that if the Farmers Union Central Exchange desires to have their subsidiaries incorporated under chapter 10-15, the duration of the corporation may not exceed twenty years. It is further our opinion that if they organize under chapter 4-07 of the N.D.R.C. of 1943, their existence may be fifty years.

ELMO T. CHRISTIANSON

Attorney General